

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.  
CCB-12-280

KENNETH OAKLEY,

Defendant

\_\_\_\_\_ /

(Sentencing)  
Friday, September 20, 2013  
Baltimore, Maryland

Before: Honorable Catherine C. Blake, Judge

Appearances:

On Behalf of the Government:  
Michael C. Hanlon, Esquire

On Behalf of the Defendant:  
Brendan A. Hurson, Esquire

Reported by:  
Mary M. Zajac, RPR, FCRR  
Fourth Floor, U.S. Courthouse  
101 West Lombard Street  
Baltimore, Maryland 21201

1 (Proceedings at 9:17 a.m.)

2 MR. HANLON: Your Honor, I call United States versus  
3 Kenneth Oakley, Criminal Case Number CCB-12-0280. This matter is  
4 set for sentencing. Michael Hanlon for the United States. I'm  
5 joined at counsel table by Special Agent Marjorie Noel from the  
6 Bureau of Alcohol, Tobacco, Firearms and Explosives.

7 THE COURT: All right. Thank you.

8 MR. HURSON: Good morning, Your Honor. Brendan Hurson  
9 on behalf of Mr. Oakley.

10 THE COURT: All right. If we're all ready to proceed.  
11 We are here for sentencing for Mr. Oakley following his guilty  
12 plea to the -- superseding information, is it?

13 MR. HANLON: That's correct, Your Honor.

14 THE COURT: Yes. Charge of unlawful possession of a  
15 firearm, a stolen firearm. And I have the Presentence Report  
16 with some amendments already made, I think, based on your letter,  
17 Mr. Hurson.

18 So let me just start. Mr. Hanlon, looking at the  
19 Presentence Report as amended, any additions, corrections or  
20 modifications?

21 MR. HANLON: No, Your Honor.

22 THE COURT: And Mr. Hurson, anything else?

23 MR. HURSON: No. We had made one change to Page One,  
24 and we did it this morning and that was it. Thank you.

25 THE COURT: Okay. All right. And just to be clear,

1 Mr. Oakley also read the Presentence Report and discussed it with  
2 you?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Great. It does indicate that, in  
5 terms of the advisory guideline range, we start as an offense  
6 level of 24. There are two prior qualifying convictions. The  
7 parties agree that Mr. Oakley is entitled to a three-level  
8 downward adjustment for acceptance of responsibility, which would  
9 be an offense level of 21. His criminal history category is a  
10 VI, so the advisory guideline range would be from 77 to 96  
11 months.

12 We're in agreement?

13 MR. HANLON: Yes, Your Honor.

14 MR. HURSON: Yes.

15 THE COURT: All right. And, of course, I've reviewed  
16 the file and the Presentence Report and the plea agreement, and I  
17 understand there's a recommended disposition. And if you would  
18 like to address that, Mr. Hanlon, why that's an appropriate  
19 sentence.

20 MR. HANLON: Thank you, Your Honor. Again, I'll be  
21 brief. The government does believe, based on its evaluation of  
22 all of the circumstances in this case, including the offense, but  
23 also information about the defendant's background that's been  
24 provided to me by Mr. Hurson, I believe the Court has some of it,  
25 and, Mr. Hurson, you know, I'll say for the record, provided me

1 some additional information which factored into the government's  
2 decision to enter into this non-922(g) disposition, all of those  
3 circumstances together led the government to believe that a  
4 disposition other than under 922(g) was appropriate in this case,  
5 which is why we did the superseding information.

6 It also led me to conclude that the recommended (C)  
7 plea was also an appropriate disposition.

8 I factored in the defendant's criminal history, which  
9 is substantial, and would often, in a typical case, cut in favor  
10 of a higher recommendation by me. But when combined with the  
11 mitigation the defense provided, as well as some of the  
12 background and the specific circumstances of the gun possession  
13 in this case, which is very serious, but there's mitigation  
14 provided by the defendant's background, I was led to conclude  
15 that a 90-month sentence would be an appropriate balancing of  
16 those various factors.

17 It's still within the guidelines range under the stolen  
18 gun offense.

19 THE COURT: Right.

20 MR. HANLON: So it's supported under that 3553(a)  
21 factor. And the government believes it appropriately balances  
22 the other factors under 18 USC Section 3553(a), including the  
23 nature of the offense, which is a serious one, as well as the  
24 defendant's criminal history, as well as the rest of his  
25 background. So the government recommends the 90-month

1 disposition.

2 THE COURT: Okay. Thank you, Mr. Hanlon. I believe I  
3 know essentially what you're referring to in terms of the  
4 mitigation in Mr. Oakley's background. Certainly, I'd be happy  
5 to hear anything additional Mr. Hurson would like to say.  
6 Obviously, the charge could have been a lot more serious.

7 MR. HURSON: It originally was. And Mr. Oakley and I,  
8 as you can tell, we've been together a long time. Originally,  
9 this case was assigned to Ms. Newberger, and it was transferred  
10 to me when she went on leave. Over the course of the years that  
11 we've, Mr. Oakley and I, have been together, we were able to  
12 track down a lot of the documents about his life, school records.  
13 We were able to have him looked at by some medical professionals.

14 Basically, what we determined was that at the time he  
15 committed this offense he was, for lack of a better term, in  
16 really bad shape. He was paranoid. He was, he was not properly  
17 medicated. He wasn't doing well at all. And when he was caught  
18 with a firearm that day, he was clearly not supposed to be in  
19 possession of a gun and lawfully couldn't, and he knows that.  
20 But he wasn't thinking rationally at the time.

21 Over the course of being at Supermax, he's had a number  
22 of physical ailments that have been addressed. And he's been  
23 medicated and he's been doing really well.

24 I've noticed in the years we've been together a  
25 physical transformation, emotional transformation. And quite

1       frankly, the government didn't have to do this.

2               And I was listening to Eric Holder's speech before the  
3       Congressional Black Caucus yesterday about how high sentences  
4       generate disrespect for the law. And Mr. Hanlon, though he  
5       wasn't privy to that speech at the time, and this doesn't fall  
6       under, necessarily, the guidelines that the Justice Department  
7       has now issued for mandatory minimums, I really credit the  
8       government for seeing this sentence of what would have been 15  
9       years minimum really was not appropriate for someone like Mr.  
10      Oakley, whose record includes nothing but small, hand-to-hand  
11      drug transactions. And Mr. Hanlon is the one who saw it as it  
12      was.

13              Certainly, it merits punishment, and I think 90 months  
14      is stiff punishment. But Mr. Oakley accepts that. And he, too,  
15      thanks the government. He's not going to say anything today at  
16      sentencing, but he really does thank Mr. Hanlon for giving him  
17      the opportunity to take a charge that was maybe a little bit more  
18      in line with what was appropriate.

19              So we have nothing else to add. We'd ask that the  
20      Court consider a designation to FCI Fairton, F-A-I-R-T-O-N.

21              THE COURT: Fairton.

22              MR. HURSON: That's correct. I've done Mr. Oakley's  
23      BOP numbers, if you will, and it seems like he'll be classified  
24      at a medium. And they can handle, it appears, his medication  
25      needs.

1           Beyond that, we have a consent order of forfeiture that  
2 I think is before Your Honor. We obviously don't contest the  
3 forfeiture of the firearm. That was included in the plea  
4 agreement. And again, I thank the government.

5           THE COURT: Thank you. I do have a consent order of  
6 forfeiture. Not clear to me that Mr. Oakley has signed it.

7           MR. HANLON: Your Honor, I did not elicit the  
8 defendant's signature. The plea agreement calls for forfeiture  
9 and it's part of the agreement. I shared it with Mr. --

10          THE COURT: That's sufficient?

11          MR. HURSON: Yes.

12          THE COURT: Okay.

13          MR. HANLON: I figured fewer signatures may be easier.

14          THE COURT: And were there any other recommendations to  
15 the Bureau of Prisons that would be appropriate? It seemed to  
16 me, in terms of supervised release, that mental health  
17 counseling, vocational, educational programs, and substance abuse  
18 treatment, if and as the probation officer thinks it's necessary.

19          MR. HURSON: That's fine, Your Honor. We would ask for  
20 all those things.

21          THE COURT: Okay. And FCI Fairton. Any specific  
22 reason to --

23          MR. HURSON: Well, the proximity to the family is the  
24 number one reason.

25          THE COURT: Okay.

1           MR. HURSON: Mr. Oakley had looked at some programming  
2 there that he thought was appropriate to him, although it's  
3 escaping me exactly what program it was. I think it would be  
4 sufficient to say that the programming offered at Fairton is in  
5 line with defendant's needs.

6           I want to make sure -- we changed it again -- but he  
7 has been incarcerated since March 7th, 2012. And it was  
8 originally a state case, which was nol prossed. But for purposes  
9 of the judgment, if Your Honor could note that he has been in  
10 custody since March 7th, 2012, that would be, that may help to  
11 ensure that he gets the proper credit for time.

12          THE COURT: Okay. Obviously, it's up to the Bureau of  
13 Prisons to do that. But you've got a date of arrest is March  
14 7th. The May 7th is going to become March 7th on the front page.  
15 That's fine. It will provide that the sentence should begin as  
16 of March 7th, 2012.

17          MR. HURSON: Thank you.

18          THE COURT: Give him credit for that. Mr. Oakley, as  
19 you know, you have a right to speak if you want to. Your  
20 attorney has indicated that you don't want to at this point,  
21 which is absolutely fine. But I just need to advise you of that  
22 and make sure. If there's anything you would like to say, you  
23 have the right to do that.

24          THE DEFENDANT: No, ma'am.

25          THE COURT: Okay. Well, thank you all. I do, I was



1 inclined coming in, or I would have let you know, and what you've  
2 told me supports the recommended disposition that you both came  
3 up with. It did appear to me that there are, while this is a  
4 very serious offense, obviously, it's dangerous for Mr. Oakley as  
5 well as for the public, clearly, there were mitigating factors in  
6 Mr. Oakley's personal situation and in his perhaps mental and  
7 emotional state at the time of the offense.

8 His criminal history, while certainly lengthy, again,  
9 does not reflect the kind of violence or danger that would  
10 warrant a much more serious sentence, which certainly he could  
11 have been looking at.

12 I appreciate the government's recommendation and  
13 reasonableness as well. I do think what you all have agreed to  
14 is appropriate for the reasons you explained.

15 So the sentence on this superseding information, the  
16 unlawful possession of a stolen gun, will be 90 months in the  
17 custody of the Bureau of Prisons. I'll recommend that you be  
18 designated to FCI Fairton to be close to your family, and on  
19 account of the programming that's available. Of course, it's  
20 ultimately up to the Bureau of Prisons. But I'm happy to  
21 recommend that. The sentence should begin as of March 7th, 2012,  
22 when you came into custody on this charge.

23 Now, there will be a period of two years of supervised  
24 release when you come out of incarceration. And there's some  
25 special conditions there that I hope will be helpful, which is

1 any mental health testing, treatment, evaluation, counseling, the  
2 probation officer recommends, and any vocational or educational  
3 program the probation officer recommends, as well as  
4 participation in any substance abuse treatment or counseling that  
5 the probation officer recommends.

6 Your financial circumstances don't permit imposition of  
7 a fine so there won't be a fine. There is a required \$100  
8 special assessment that I do have to impose.

9 And, of course, I'm sure that the probation officer and  
10 Mr. Hurson will make sure that all the appropriate medical  
11 information gets to the Bureau of Prisons.

12 Anything I have not addressed? Anything I've left out  
13 of that sentence? Any legal objection.

14 MR. HANLON: I have counts to dismiss, Your Honor.

15 THE COURT: Sure.

16 MR. HURSON: That was it for me, Your Honor. Thank  
17 you.

18 THE COURT: Okay. If you want to go ahead with the  
19 counts.

20 MR. HANLON: Yes, Your Honor. In light of the  
21 defendant's plea of guilty to the superseding information, the  
22 government moves to dismiss the original indictment. I believe  
23 there was only one indictment.

24 THE CLERK: Yes.

25 MR. HANLON: That's confirmed. Thank you.

1           THE COURT: That will be dismissed. Mr. Oakley, in  
2 light of the plea agreement and the sentence that you've just  
3 been given, I don't believe there's anything you probably have a  
4 right to appeal from or would necessarily want to. But you can  
5 consult with Mr. Hurson. If you were going to file any appeal,  
6 that would need to be within 14 days. Do you understand that,  
7 sir?

8           THE DEFENDANT: Yes, ma'am.

9           THE COURT: Okay. Good luck. I have signed the  
10 forfeiture order.

11           (Conclusion of Proceedings at 9:29 a.m.)  
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Kenneth Oakley, Case Number(s) CCB-12-280, on September 20, 2013.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mary M. Zajac,  
Official Court Reporter